

Labor Costs - Emergency Work

Recovery Policy 9525.7

- I. **TITLE:** Labor Costs - Emergency Work
- II. **DATE:** November 16, 2006
- III. **PURPOSE:** Provide guidance on the eligibility of labor costs for an applicant's permanent, temporary, and contract employees who perform emergency work under Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended.
- IV. **SCOPE AND AUDIENCE:** This policy applies to all emergencies, major disasters, and fire management assistance declarations, declared on or after the publication date of this document.
- V. **AUTHORITY:** Sections 403, 407, 420 and 502 of the Stafford Act and 44 Code of Federal Regulations (CFR) §204.42, §206.224 and §206.225.
- VI. **BACKGROUND:**
 - A. On October 14, 1993, FEMA published a regulation that made the force account labor straight-time salary for work under Section 403 and 407 ineligible under the Public Assistance Program. The 1993 regulation did not include emergency work accomplished under Section 502 (Federal Emergency Assistance) of the Stafford Act. The ineligibility of straight-time salaries for emergency work under Section 502 is included as a provision of the FEMA-State Agreement.
 - B. Labor (straight-time, overtime, and fringe benefits to the extent the benefits were being paid before the disaster) performed under Section 406 (permanent work) of the Stafford Act remains eligible for reimbursement.
- VII. **POLICY:**
 - A. Under Sections 403, 407, and 502 of the Stafford Act, eligible emergency work labor costs are those costs incurred by an eligible applicant while performing eligible work. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel is not eligible in calculating the cost of eligible emergency work. The FEMA-State Agreement will stipulate the ineligibility of straight-time salaries and benefits of an applicant's permanently employed personnel performing emergency work (Categories A and B). For the purpose of this policy, "permanently employed personnel" will refer to those employees whose positions are already included in the applicant's budget.

- B. Fixed-term employees, such as seasonally employed personnel, when covered under existing budgets and used for a disaster during the season of employment, are considered permanently employed for the purpose of cost eligibility.
- C. Straight-time and overtime will be determined in accordance with the applicant's pre-disaster policies, which should be applied consistently in both disaster and non-disaster situations. For example, one applicant may define labor exceeding 8 hours a day as overtime, while another might define labor exceeding 40 hours a week as overtime. However, all costs, including premium pay, must be reasonable and equitable for the type of work being performed.
- D. The actual costs of salaries and benefits for individuals sent home or told not to report due to emergency conditions are not eligible for reimbursement. Extraordinary costs for essential employees who are called back to duty during administrative leave to perform disaster-related emergency work are eligible if the costs were provided for in written policy prior to the disaster.
- E. The costs for contract labor, mutual aid in accordance with an existing agreement, or temporary hires needed to accomplish emergency work are eligible for reimbursement. However, straight-time salary and benefits of force account labor overseeing contractors performing emergency work are not eligible in calculating the cost of eligible emergency work.
- F. The reimbursement of force account or temporary labor to backfill regular staff who are performing eligible emergency work may be eligible. Backfill cost is defined as the straight-time salary and benefits and overtime of replacement personnel who perform the regular duties of other personnel while they are performing eligible emergency work under the Public Assistance Program. There are several circumstances which affect the eligibility of the backfill employee.
 - 1. If the backfill employee is a contract or extra hire, the cost of this extra person represents an extra cost to the applicant. Regular and overtime are eligible. If the employee is permanently employed, straight time is not eligible. Only overtime costs are eligible.
 - 2. The cost of straight-time salaries and benefits of an applicant's permanently employed personnel, of any department, regardless of any inter-departmental agreements, are not eligible.
 - 3. If the backfill employee is a regular employee who is called in on his/her day off (weekend or other off day), there may be an extra cost to the applicant. Regular and overtime costs may be eligible.
 - 4. If the backfill employee is called in from scheduled leave, there should be no extra cost as the leave can be rescheduled. Only the overtime is eligible.
 - 5. Generally, exempt employees (i.e. those who are exempt from minimum wage and overtime provisions of the Fair Labor Standards Act) are not eligible for overtime, unless specified in an applicant's pre-disaster policy.

- G. Permanent employees who are funded from an external source (e.g., by a grant from a Federal agency, statutorily dedicated funds, rate-payers, etc.) to work on specific non-disaster tasks may be paid for emergency work. However, the FEMA Region is to consult with FEMA headquarters before approving payment.
- H. Reimbursement of labor costs for employees performing emergency work is limited to actual time worked, even when the applicant is contractually obligated to pay for 24 hour shifts. It is not reasonable for a person to work more than 48 hours continuously without an extended rest period. Therefore, FEMA will reimburse up to 24 hours for each of the first two days, and up to 16 hours for each of the following days for emergency work. All requested hours must be for actual time worked. Standby time is not eligible under the Public Assistance Program or Fire Management Assistance Grant Program. Pre-positioning under the Fire Management Assistance Grant Program is eligible if the resources were actually used to suppress a declared fire.
- I. The value of volunteers accomplishing eligible emergency work can be credited toward the non-Federal cost share of the applicant's emergency work in accordance with Donated Resources Policy #9525.2.

VIII. **ORIGINATING OFFICE:** Recovery Division (Public Assistance Branch)

- IX. **SUPERSESSION:** This policy updates and replaces all relevant provisions of previous Public Assistance policy documents or guidance on this subject.
- X. **REVIEW DATE:** Three years from date of publication.